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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

STATE OF DELAWARE,

Plaintiff,

—v.—

STATE OF NEW YORK,

Defendant.

BRIEF OF *AMICI CURIAE* IN SUPPORT OF THE PETITIONER'S MOTION FOR LEAVE TO FILE COMPLAINT

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AS AMICI CURIAE

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The Securities Industry Association, Inc. ("SIA"), Bear, Stearns & Co. Inc. ("Bear Stearns"), Dominick & Dominick, Incorporated ("Dominick"), Drexel Burnham Lambert Incorporated ("Drexel"), PaineWebber Incorporated ("PaineWebber") and Shearson Lehman Hutton Inc. ("Shearson") submit this brief as *amici curiae* in support of the motion of the State of Delaware for leave to file its Complaint against the State of New York. Pursuant to Rule 36.1 of the Rules of this Court, the written consent of plaintiff the State of Delaware and defendant the State of New York has been obtained and has been filed with the Clerk of the Court.

INTEREST OF *AMICI CURIAE*

SIA is the principal trade association of the securities industry, having as its members hundreds of securities firms, including *amici curiae* Bear Stearns, Dominick, Drexel, PaineWebber and Shearson. Many of SIA's members are incorporated under the laws of the State of Delaware, but maintain their principal places of business in New York City ("Delaware Brokers"). Delaware Brokers frequently hold monies and other intangible property for which they cannot identify a beneficial owner, much less a last known address for the owner. Over the years, the State of New York has routinely compelled delivery of this property by Delaware Brokers under Article V-A of the New York Abandoned Property Law, N.Y. Aband. Prop. Law, art. V-A (McKinney Supp. 1988), notwithstanding this Court's prior decisions granting to the state of the holder's incorporation (here, Delaware) the right to escheat abandoned property for which there is no last known address.

Amici curiae have a substantial interest in the resolution of this controversy between Delaware and New York. New York's prior enforcement of its expansive escheat policy has led to New York's assertion of claims against Delaware Brokers for the very property that is in issue in this action. A number of brokerage firms have also been the subject of lengthy audits by New York's auditors with respect to the same property. The Delaware Brokers' failure to acquiesce in New York's position has led to threats of litigation, and, in the case of PaineWebber, a seven-year administrative proceeding. Thus, a decision by this Court on the issues raised by the Complaint will have a substantial and immediate impact on the *amici*, not only with respect to their future reporting obligations but also with respect to claims by New York and Delaware that are pending against them.

REASONS FOR GRANTING LEAVE TO FILE COMPLAINT

Recognizing the need for simple rules of general application, this Court, in *Texas* v. *New Jersey*, 379 U.S. 674 (1965), and *Pennsylvania* v. *New York*, 407 U.S. 206 (1972), established that where the last known address of an owner of abandoned property can be determined, the state of that address has the right and power to escheat the property. Where no such address can be determined, the state of incorporation of the holder—here the brokerage firm—has the right to escheat the property. Pursuant to these rules, the State of New York annually escheats millions of dollars of property owed to persons having last known addresses in New York and from holders incorporated under New York law. In addition, however, New York has derived substantial revenues from escheating property from the Delaware Brokers where no last known address for an owner of the property can be determined. Because the New York Abandoned Property Law provides for escheat after only three years, while the Delaware Escheat Law, Del. Code Ann. tit. 12, §§ 1197-1211 (1987), provides for escheat after seven years, New York has demanded and often received abandoned property held by the Delaware Brokers prior to the time when Delaware could make any claim to it.

This Court's reaffirmation of the applicability of its prior decisions is necessary to avoid the Delaware Brokers' being subjected to multiple claims to the same property. The New York Abandoned Property Law purports to protect holders of property from conflicting claims to the same property by providing that "[n]o action shall be maintained" against the holder to recover property previously turned over to New York. N.Y. Aband. Prop. Law § 1404(3). The New York statute, however, is not binding upon subsequent out-of-state claimants who assert ownership of the property escheated by New York, including claimant states such as Delaware. *See Nevada* v. *Hall*, 440 U.S. 410, 421-23 (1979) (under the Full Faith and Credit Clause of the United States Constitution, one state need not apply another state's statute if that statute conflicts with the laws of the

forum state). The New York law also provides that the Comptroller may, within six years after property is delivered to New York, refund the property to the holder *if* "it appears to the satisfaction of the state comptroller" that the property was turned over by mistake. N.Y. Aband. Prop. Law § 1404(4). It seems unlikely, if Delaware were to assert a subsequent claim to property escheated by New York, that the New York Comptroller would decide that New York had acquired the property in error.

In *Western Union Telegraph Co.* v. *Pennsylvania*, 368 U.S. 71, 79 (1961), this Court expressly recognized the problem of conflicts among the escheat laws of different states. The Court held that litigation between claimant states in the original jurisdiction of this Court was the only solution adequate to protect holders of property from multiple claims. 368 U.S. at 75. *Amici* submit that this Court should exercise its jurisdiction in this action to reaffirm the rules of *Texas* v. *New Jersey* and *Pennsylvania* v. *New York*. The wisdom of the rules' simplicity is underscored by this controversy, which involves not a dispute over their interpretation, but, rather, a refusal by New York to honor their plain import. Absent this Court's intervention, the Delaware Brokers will continue to be subjected to the demands of conflicting rules of law: the pronouncements of this Court, on the one hand, and the ever-expanding scope of the New York Abandoned Property Law, on the other.

CONCLUSION

For the foregoing reasons, the motion of the State of Delaware for leave to file the Complaint should be granted.

Dated: May 9, 1988

Respectfully submitted,

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